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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1353

WILLIAM A. BURLESON,

Petitioner,

v.

ROBERT L. FRIEDLI, AUGUST WOLFF, and JOSEPH J. PASTORE
Trading as Friedli, Wolff & Pastore,

Respondents.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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RULES OF COURT CITED

Federal Rule of Civil Procedure 30(f)(2) 1

Superior Court Civil Rule 30(f)(2) 5

Superior Court Civil Rule 201 3

AUTHORITIES CITED

Title 5 Appendix I Section II of the Federal Advisory Committee Act (Title 5 Appendix I Section II USCA (1972) 4

General Services Administration Transcripts, Court Reporting 3FP-AL-R-3617-6-12-74 4

Government of the District of Columbia – Invitation, Bid and Contract 0141-AA-75-0-4-HW 4

The Indigent Civil Plaintiff in the District of Columbia 235, 27 Fed. Bar J. 235 (1967) 4

Deposition Costs and the Client of Modest Means, pg. 145 by John R. Schmirtz, Jr. (Georgetown Law Center) . . 4

Oral Depositions: The Low Income Litigant and the Federal Rules 54 Va. Law Review Number 3, 391-427 (1968) 5

NSRA Committee on Rates and Charges Report of Survey-1974-Court Work, p. 453 5

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REPLY TO QUESTIONS PRESENTED BY RESPONDENTS

The Federal Rules of Civil Procedure were also used in deposing parties; one of whom was charged for a Transcript copy pursuant to F.R.C.P. 30(f)(2) and is the subject matter of this present action (See App. No. 1 and Answer to Request for Admissions, Index to Record, pp. 281-300, D.C. Court of Appeals), and whose case is set for Trial on October 4, 1976.

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Respondents state incorrectly that all parties were given an opportunity to make any changes, amendments, additions or qualifications to the "Settlement Agreement". The parties did initial a steno tape in the Courtroom at the direction of the Trial Judge, (Trial Transcript of Nov. 7, 1974, p. 13, line 25), but the Petitioner does not read shorthand and cannot attest to the accuracy of what was initialed. Petitioner initialed the steno tape W.A.B. – Defendant (Trial Transcript of Nov. 7, 1974, p. 3, line 17), indicated that he was signing on behalf of himself, not his clients. (Trial transcript of Nov. 7, 1974, p. 13, line 9 - 11) and the Trial Judge indicated he would not close out the Appeal from his finding of reasonableness as to the Transcript cost, (Trial Transcript of Nov. 7, 1974, p. 7, line 10-14). The Trial Judge gave the Petitioner ten days to prepare an Order (Trial Transcript of Nov. 7, 1974, p. 8, line 20), and on November 8, 1974, the very next day, the Petitioner prepared a Praecipe and Order reflecting the terms of the Trial proceedings of the day before (See App. Nos. 2 & 3). The terms of these proceedings were *not* reread to *the parties* by the Court Reporter; in fact, the Trial Judge, while questioning the ability of the shorthand Reporter to transcribe accurately (Trial Transcript of Nov. 7, 1974, p. 13, line 3), *did not* have the Reporter read back what he had dictated. The Petitioner relied upon the *entire* Transcript of the proceedings which reflected there was no "Settlement Agreement", and on the Court's decision of its finding of reasonableness as to the copy Transcript charges. The Trial Court stated that the Petitioner made payment out of funds that were not Petitioner's personal monies, but funds that fell into his hands as a result of settlement in respect to which he exercised a fiduciary capacity, (Trial Transcript of Nov. 4, 1974, p. 22, line 19-22). Petition, in filing his Notice of Appeal relied upon the entire record being forwarded to the Appellate Court and upon the Court's

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statement that it would not close the Petitioner out from Appealing the Court's finding, (Trial Transcript of Nov. 7, 1974, p. 7, lines 10-14); and giving him ten days to have his Order typed up to give the parties an opportunity to look at it, (Trial Transcript of Nov. 7, 1974, p. 8, line 20, p. 12, lines 6-8). After the record had been typed up, Petitioner found out that an additional nine minutes of Court proceedings were kept out of the Trial Transcript, (Trial Transcript of Nov. 7, 1974, p. 2, lines 1-6 and Superior Court Civil Rule 201) but was informed that the Court Reporter had a tape recording of these nine minutes. In a subsequent proceeding, the Court of Appeals was informed that a tape recording had *not* been made. In an attempt to include the complete Transcript on Appeal, Petitioner submitted evidence in support of a complete Transcript to the Trial Judge and opposing Counsel, and also requested stipulations as to the missing portions of the Transcript, (Index to Record, p. 563, D.C. Court of Appeals). The Respondent denied and responded to the stipulations, (Index to Record, p. 508 & 568, D.C. Court of Appeals), admitted that he personally had a tape recorder in the Courtroom during these proceedings, but stated it was inoperative. The Trial Court took no action to ascertain the accuracy and completeness of the record. This procedure violated the requirement that all proceedings shall be simultaneously recorded by a stenographer under the direction of the Court. The Appellate Court, although it tried, was unable to obtain a complete record of these Trial Proceedings of November 7, 1974.

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ADDITIONAL DEPOSITS OF CLIENTS' FUNDS INTO COURT REGISTRY

On June 28, 1974, a Superior Court Judge signed an Order granting leave to deposit certain funds into the Registry of the Court, (See App. No. 4). Since that date individual's funds have been deposited into the Registry of the Court, and on March 31, 1976, an additional $63.83 was deposited on behalf of a litigant who is named as an individual who is charged copy costs of transcripts in this present action, (See App. Nos. 5, 6 and Answer to Request for Admissions, Index to Record, pp. 281-300, D.C. Court of Appeals).

The issue as to the reasonableness of charges for copies of depositions for the individual Litigants was fully argued andspresented at the Trial Court and the following authorities were placed in the record, (Motion for Summary Judgment with Exhibits, Index to Record, pp. 345-453, D.C. Court of Appeals:

> Title 5 Appendix I Section II of the Federal Advisory Committee Act (Title 5 Appendix I Section II USCA (1972).
>
> General Services Administration Transcripts, Court Reporting 3FP-AL-R-3617-6-12-74.
>
> Government of the District of Columbia – Invitation, Bid and Contract of 0141-AA-75-0-4-HW.
>
> The Indigent Civil Plaintiff in the District of Columbia 235 27 Fed. Bar. J. 235 (1967).
>
> Deposition Costs and the Client of Modest Means, pg. 145 by John R. Schmirtz, Jr. (Georgetown Law Center).

Oral Depositions: The Low Income Litigant and the Federal Rules 54 Va. Law Review Number 3, 391 - 427 (1968).

NSRA Committee on Rates and Charges Report of Survey-1974-Court Work.

SUBSEQUENT INTERPRETATIONS OF RULE 30(f)(2) BY SUPERIOR COURT JUDGES

On January 28, 1976, a Superior Court Judge held that charges of $0.80 per page for third copy was not in violation of Rule 30(f)(2), (See App. No. 7).

On June 7, 1976, in his interpretation of Rule 30(f)(2), another Superior Court Judge held that the original Transcripts are in the file at the Courthouse and are available for perusal by all parties, (See App. No. 8).

CONCLUSION

The Respondent has chosen not to comment on question number 1 of the Petition, nor on item A in support of reasons for granting the Petition for a Writ of Certiorari.

Petitioner resepctfully asks this Court to Order up the record below, grant his Petition for Certiorari to correct this abuse of Judicial Process in the denial of his Constitutional Rights, and to establish guidelines for determining

reasonableness of charges for copies of depositions Pursuant to Rule 30(f)(2).

Respectfully submitted,

RICHARD ARENS
Attorney for Petitioner
1000 Pennsylvania Avenue, S.E.
Washington, D.C.

Of Counsel:

Michael C. McGoings
1000 Pennsylvania Avenue, S.E.
Washington, D.C.

June, 1976.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

HENRY J. WADDELL
Plaintiff(s)

vs. Civil Action No. 2207-70

PEPSI COLA COMPANY
Defendant(s)

NOTICE OF THE TAKING OF DEPOSITION
UPON ORAL EXAMINATION UNDER
RULE 30 OF THE FEDERAL RULES
OF CIVIL PROCEDURE

Please take notice that Counsel giving this notice in behalf of his client will take the deposition of the parties and/or witnesses listed below at the times set opposite their names, at 1215 Nineteenth Street, N.W., Washington, D.C., before Friedli, Wolff & Pastore, Shorthand Reporters, or any other authorized notary public in and for the District of Columbia. Said examination will be for the purpose of discovery or as evidence in this action, or both, pursuant to the provisions of Rule 30 of the Federal Rules of Civil Procedure.

Persons to be deposed	Date	Time
Henry J. Waddel	Monday, April 27, 1970	4:00 P.M.

GALIHER, STEWART & CLARKE
By William E. Stewart, Jr.
1215 Nineteenth Street, N.W.
Washington, D.C. 20036
FEderal 7-8330
Attorneys for Defendant

[CERTIFICATE
OF SERVICE]

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
Civil Division
The 8th Day of November, 1974

ROBERT L. FRIEDLI, AUGUST WOLFF AND JOSEPH J. PASTORE, T/A FRIEDLI, WOLFF AND PASTORE

Plaintiffs

vs. No. CA 4672-74

WILLIAM A. BURLESON

Defendant

The Clerk of said Court will enter a dismissal with prejudice of plaintiffs' claim against defendant and a dismissal with prejudice on defendant's amended counterclaim against plaintiffs, entered into by the parties herein on Thursday, November 7, 1974.

WILLIAM A. BURLESON WILLIAM R. KEARNEY

SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division

ROBERT L. FRIEDLI, AUGUST WOLFF,
and JOSEPH J. PASTORE
T/A FRIEDLI, WOLFF & PASTORE
Plaintiffs

vs. Civil Action No. 4672-74

WILLIAM A. BURLESON
Defendant

ORDER

The Court finds that the charges for copies of the transcripts of the depositions made by plaintiffs are reasonable. It is therefore, this _____ day of November, 1974,

ORDERED and ADJUDGED that the monies deposited by the defendant in the Registry of the Court be disbursed to the plaintiffs.

_____
JUDGE

SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
Civil Division

FRIEDLI, WOLFE and PASTORE,
T/A Friedli, Wolfe & Pastore,
Plaintiffs

vs. CA No. CA 4672-74

BURLESON,
Defendant.

ORDER.

AND NOW, the matter having come before the Court upon motions of Julian Karpoff, Esq., on behalf of defendant and it appearing that no opposition has been timely filed, it is hereby, by the Court, this 28th day of June, 1974,

ORDERED, that defendant be, and he hereby is, granted leave to deposit certain funds with the Court Registry; and it is further

ORDERED, that defendant be, and he hereby is, granted leave to file an Amended Counterclaim within ten (10) days from the date of this Order.

Date: June 28th, 1974.

/s/ LUKE MOORE
Luke Moore
Judge

[CERTICICATE OF SERVICE]

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FRIEDL WOLFF & PASTORE
STENOTYPE AND SHORTHAND REPORTERS
910 16TH STREET, N.W., WASHINGTON, D.C. 20006
TEL NO. 33[illegible]
PHONES NA [illegible] NA 8-1982

042259

JOHNSON $61.06

STATEMENT DATE
18 May 1973

Julian Harroff, Esq.
1000 Pennsylvania Ave., S.E.,
Washington, D. C.

IMPORTANT: PLEASE DETACH AND RETURN THIS STUB WITH YOUR REMITTANCE.

In re: Johnson, et al vs. Lenz, et al
Deposition of Patricia Mary Lenz

Carbon copy, 73 pp. at .08¢ per page	$[illegible]
Postage	.04
Tax	[illegible]
	$61.06

10.-

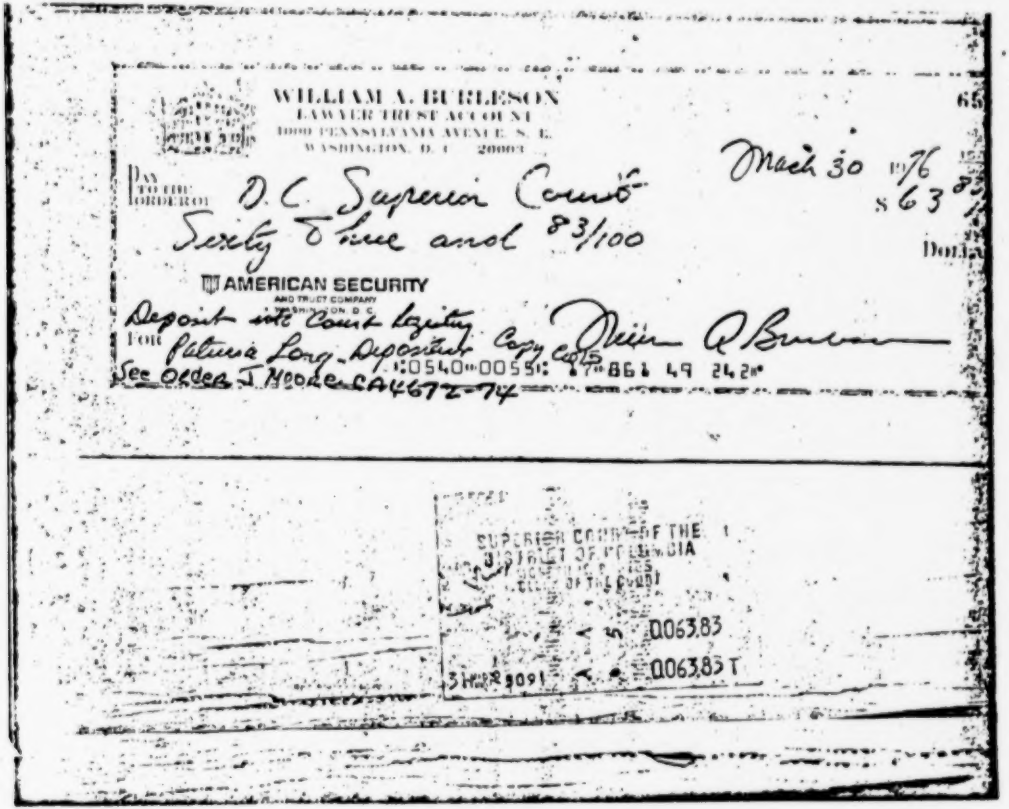
Statement. Since financing of accounts is a great burden to everyone in business, we are now forced to charge overdue accounts 1½% interest per month for all billings unpaid 90 days after rendition of statement. This represents an Annual Percentage Rate of 18%.

042259

STATEMENT

62.89
.94
63.83

Sa



WILLIAM A. BURLESON
LAWYER TRUST ACCOUNT
1000 PENNSYLVANIA AVENUE, S. E.
WASHINGTON, D. C. 20003

65

March 30 19 76

PAY TO THE ORDER OF D.C. Superior Court $ 63.83

Sixty three and 83/100 Dollars

AMERICAN SECURITY AND TRUST COMPANY
WASHINGTON, D. C.

Deposit with Court Registry
FOR Palma Long - Deposit Copy Costs

See Order J. Moore CA4672-74

:0540=0055: 17 861 49 24 2m

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

0063.83

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SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SETTLES
Plaintiff

v. No. CA 7224-74

ELLIOTT
Defendant

ORDER

Upon consideration of the oral motion re transcript filed by as reflected in pre-trial order etc. and after hearing argument on behalf of all parties concerned, it is by the Court this 28th day of Jan., 1976,

ORDERED:

(1) That the motion be, and it is hereby, denied.

(2) That the Court finds that the charges of Harkin-Columbia are not in violation of Rule 30(f)(2) re 80¢ per page for third copy.

/s/ THEODORE NEWMAN
Theodore Newman
Judge

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SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

CHARLOTTE HENDERSON
Plaintiff

vs. Civil Action No. 7225-74

HELEN WALKER DIGGS
Defendant

PRE-TRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

* * * * *

8. Plaintiff, citing Rule 30(f)(2) of the Rules of this Court, asked that copies of various transcripts of depositions be made available to her at a rate less than that provided by the Rules of this Court. Copies of these transcripts are in the Court file and are available for perusal by all parties. Consequently, this motion is denied.

Dated June 7, 1976.

Original signed by John R. Hess
Judge John R. Hess
Pre-Trial Judge